

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF T-MOBILE NORTHEAST, LLC : Case No. S-2805
AND JOHN D. AMMERMAN : OZAH No. 11-29
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A hearing in the above-entitled matter was held on June 24, 2011, commencing at 9:37 a.m., at the Council Office Building, 100 Maryland Avenue, Room 200, Rockville, Maryland 20850 before:

Martin L. Grossman, Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

Sean p. Hughes, Esq.
6339 Ten Oaks Road, Suite 305
Clarksville, Maryland 21029

ALSO PRESENT:

Hillorie Morrison
Network Building & Consulting, LLC
7380 Coca Cola Drive, Suite 106
Hanover, Maryland 21076

Anne Sturm
Sugarloaf Citizens Association
P.O. Box 218
Dickerson, Maryland 20842

Page

WITNESSES:

Emory Barge

34/45

Neighbor in Opposition
21910 Whites Ferry Road
Dickerson, Maryland 20842

EX H I B I T S

		<u>Marked</u>	<u>Received</u>
Exhibit No. 19	Affidavit of Posting	18	--
Exhibit No. 20A	Large Revise Site Plan 6/22/11	32	--
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Exhibit No. 21A	11 x 17 Version or Revised Site Plan of 6/22/11	32	--
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Exhibit No. 22	Map Showing Location of Barge Farm	45	--

1 MR. GROSSMAN: All right. We'll get to that in a
2 second. Let me ask, I see people in the audience, is there
3 anybody in the audience here who wishes to be heard who is
4 not a witness to be called by Mr. Hughes? Anybody who --
5 yes, sir? Your name, please?

6 MR. BARGE: Emory Barge.

7 MR. GROSSMAN: Okay, Mr. Barge. I saw your letter
8 in the file.

9 MR. BARGE: Oh, okay, sir.

10 MR. GROSSMAN: All right. And according to all of
11 -- you wish to speak in opposition to the --

12 MR. BARGE: Yes, sir.

13 MR. GROSSMAN: Okay. Anybody else who wishes to
14 be heard today? Yes, ma'am.

15 MS. STURM: Anne Sturm for Sugarloaf Citizens
16 Association.

17 MR. GROSSMAN: How do you spell your last name,
18 ma'am?

19 MS. STURM: S-T-U-R-M as in Mary.

20 MR. GROSSMAN: Okay. Anybody else who wishes to
21 be heard who is not a witness to be called by Mr. Hughes?
22 Seeing no other answers, I'm going to invite Mr. Barge.

23 MR. BARGE: Yes, sir.

24 MR. GROSSMAN: I'm going to invite you up to
25 counsel table if you would.

1 MR. BARGE: All right.

2 MR. GROSSMAN: And the same thing for you, Ms.

3 Sturm.

4 (Discussion off the record.)

5 MR. BARGE: Yes, sir.

6 MR. GROSSMAN: Mr. Barge, you=re here I take it --

7 and you spell your last name B-A-R-G-E?

8 MR. BARGE: Yes, sir.

9 MR. GROSSMAN: Okay.

10 MR. BARGE: Like on the river. Barge on the

11 river.

12 MR. GROSSMAN: All right, sir. And you=re here on

13 your own behalf, is that correct?

14 MR. BARGE: On my own behalf. I=m a close

15 neighbor.

16 MR. GROSSMAN: All right. Would you state your

17 address, please?

18 MR. BARGE: 21910 White Ferry Road, Dickerson,

19 Maryland.

20 MR. GROSSMAN: All right, sir. And --

21 MR. BARGE: I have a speech defect. I=m paralyzed

22 on the right side.

23 MR. GROSSMAN: All right. Well, it=s quite, your

24 speech is quite clear so you just take your time. We=re not

25 in any rush. And, Ms. Sturm?

1 MS. STURM: Yes.

2 MR. GROSSMAN: You said you=re here on behalf of
3 the Sugarloaf Citizens Association?

4 MS. STURM: Yes.

5 MR. GROSSMAN: I didn=t see anything in the
6 file --

7 MS. STURM: There=s --

8 MR. GROSSMAN: -- a letter from you to our office.

9 MS. STURM: There was a joint letter. I don=t
10 know if it went, I saw it in the Park and Planning file,
11 that came from a coalition of groups, Montgomery Countryside
12 Alliance, Sugarloaf. We have concerns. We=re not opposed
13 to a cell tower there.

14 MR. GROSSMAN: All right.

15 MS. STURM: Just concerns.

16 MR. GROSSMAN: Let me stop you for a second,
17 ma=am.

18 MS. STURM: Yeah.

19 MR. GROSSMAN: I=m not asking right now for your
20 statement.

21 MS. STURM: Okay. But there=s --

22 MR. GROSSMAN: I=m going to ask you about your
23 statement later. My concern is that our rules provide that
24 you have to, if you want to testify on behalf of an
25 organization, you have to file something 10 days in advance

1 stating --

2 MS. STURM: I did not --

3 MR. GROSSMAN: Stating --

4 MS. STURM: I did not do that.

5 MR. GROSSMAN: Well, let me, let me finish what
6 I=m saying.

7 MS. STURM: Okay.

8 MR. GROSSMAN: Stating what it is that you plan to
9 testify and if you plan to call any witnesses, what they are
10 and what they will say, and you did not do that, is that
11 correct?

12 MS. STURM: Right.

13 MR. GROSSMAN: All right.

14 MS. STURM: So I=m happy to leave if you --

15 MR. GROSSMAN: Well, no. I wouldn=t make you
16 leave, ma=am. You can always testify on your own behalf.

17 MS. STURM: Okay. Fine.

18 MR. GROSSMAN: The rules do not require an
19 individual to do that.

20 MS. STURM: Okay. Fine.

21 MR. GROSSMAN: Even though Mr. Barge did so
22 indicate, it=s not required by an individual and you can,
23 it=s also a public hearing, so you certainly don=t have to
24 leave. Mr. Hughes, do you have any objection to Ms. Sturm
25 representing the Sugarloaf Citizens Association here today?

1 MR. HUGHES: No, sir.

2 MR. GROSSMAN: Okay. Well, since he waives any
3 objection, you may do so.

4 MS. STURM: Thank you and thank you.

5 MR. GROSSMAN: All right. Let me go on to tell
6 you a little bit about these proceedings and give you a
7 couple of preliminary matters. These proceedings are a
8 combination of formality and informality in that we operate
9 pretty much the way you see a courtroom operate. That is,
10 witnesses are called, they are sworn in, they may be cross-
11 examined. In other words, when Mr. Hughes calls a witness,
12 you=ll be permitted to cross-examine that witness.
13 Everything is taken down by a court reporter. And
14 similarly, when you testify, Mr. Hughes will be able to, Mr.
15 Barge, when you testify, Mr. Hughes will be able to cross-
16 examine you.

17 Everything will be taken down by a court reporter
18 and there will be a transcript of these proceedings, so
19 things operate pretty much like you see a courtroom operate.
20 The rules of evidence are a little bit more relaxed in that
21 certain types of hearsay, if otherwise probative and
22 reliable, may be admitted into evidence at this type of an
23 administrative proceeding. But you=ll see it operate pretty
24 much the way a courtroom does. We are a little bit more
25 relaxed than a courtroom, all right?

1 And what we're here for today is a special
2 exception, a special exception application, and that's a bit
3 of a misnomer. A special exception is really what some
4 jurisdictions call a conditional use. It's not a variance
5 from what the Statute permits. It is something that's
6 permitted by statute if certain conditions are met and those
7 conditions are both general conditions, and they are spelled
8 out in the statute, that apply to almost every special
9 exception, and there are special conditions that apply to
10 this particular type of special exception, a
11 telecommunications facility, and it's the applicant's burden
12 to show that they have met those standards.

13 It's not a popularity contest. It's not, zoning
14 is not a plebiscite. We don't take a vote on it. What my
15 job is to gather evidence and evaluate whether or not the
16 statutory terms have been met and then the Board of Appeals
17 will make a decision on the case based on the record that we
18 produce here. No further evidence will come in before the
19 Board of Appeals.

20 All right. Let me raise a couple of preliminary
21 matters. I'd like a copy in Word of any amended statements
22 or plans that arise as a result of this proceeding. The
23 plans in PDF, as you know, and photos and simulations can be
24 in PDF or JPG format.

25 Your revised statement of support, Mr. Hughes,

1 Exhibit 14A, does not tell me who your witnesses will be,
2 nor what they will say, and that=s a requirement of Section
3 59-A-4.22(a)(xii) which provides that a special exception
4 petition must be accompanied by a summary of what the
5 applicant expects to prove including the names of the
6 applicant=s witnesses, summaries of the testimony of expert
7 witnesses and the estimated time required for presentation,
8 and it=s especially important in this case I think where the
9 Technical Staff recommended against approval. So -- and
10 based on land use issues. So I=d like to know, was there
11 any submission that you made that I just didn=t see that has
12 the names of your witnesses, including expert witnesses, and
13 identifying what they=re going to say?

14 MR. HUGHES: No. That was my oversight, Mr.
15 Grossman.

16 MR. GROSSMAN: All right. And you mentioned at
17 the beginning that you have witnesses that you intend to
18 call today. Who would they be?

19 MR. HUGHES: Yes, sir. I would call Ms. Hillorie
20 Morrison on behalf of T-Mobile. I would call --

21 MR. GROSSMAN: As a lay witness on behalf of T-
22 Mobile?

23 MR. HUGHES: Well, I would attempt to get her in
24 as an expert in land use, planning and zoning. She has been
25 so qualified before. That would be her role.

1 MR. GROSSMAN: She=s been so qualified before,
2 before this body, before a hearing examiner in Montgomery
3 County?

4 MR. HUGHES: Before Montgomery County, before
5 other jurisdictions, yes, sir.

6 MR. GROSSMAN: Okay. All right. And who else?

7 MR. HUGHES: Mr. Michael McGarity, a civil
8 engineer who also has been qualified as an expert here
9 before and in other jurisdictions.

10 MR. GROSSMAN: All right.

11 MR. HUGHES: Mr. Curtis Jews, a radio frequency
12 engineer who has also been qualified here as an expert and
13 in other jurisdictions.

14 MR. GROSSMAN: Okay. So you have three witnesses?

15 MR. HUGHES: Well, I have one potential rebuttal
16 witness, Mr. Oakleigh Thorne.

17 MR. GROSSMAN: How does he spell that?

18 MR. HUGHES: T-H-O-R-N-E.

19 MR. GROSSMAN: And first name is spelled?

20 MR. HUGHES: Oakleigh, O-A-K-L-E-I-G-H.

21 MR. GROSSMAN: All right.

22 MR. HUGHES: He has been accepted as an expert in
23 real estate here and in other jurisdictions. I would save
24 him as a rebuttal witness. We may not need to do so, Mr.
25 Grossman. And then I also have Mr. Neal Ammerman, the adult

1 son of Mr. John Ammerman who may want to talk, use for just
2 some factual background as a lay witness. Those would be
3 our witnesses, sir.

4 MR. GROSSMAN: My chief concern is the expert
5 witness because the other parties have not had an
6 opportunity to see a statement indicating what the expert
7 will testify do. I mean, they=re entitled to have that. So
8 let me see first, Mr. Barge, do you have any objection to
9 Mr. Hughes proceeding today because the point I=ve raised is
10 that he=s required, under the statute, to file with his
11 application a statement indicating who his expert witnesses
12 will be, who his witnesses will be and what they will
13 testify to. He neglected to do so. And so the question is
14 do you have any objection to proceeding today or do you wish
15 to proceed today even though you haven=t had an opportunity
16 to look at anything in the file as to his expert witnesses?

17 MR. HUGHES: Well, yes, I would have an objection.
18 Since this lady didn=t, she was late in filing, I=d have an
19 objection to this witness testifying as a witness or
20 whoever.

21 MR. GROSSMAN: All right. And, Ms. Sturm, what=s
22 your reaction to this?

23 MS. STURM: I would have no objection. I=m in no
24 position to.

25 MR. GROSSMAN: All right. So, Mr. Hughes, how do

1 you propose to handle this?

2 MR. HUGHES: I guess am I able to see if I can
3 answer some preliminary questions for Mr. Barge to see if
4 he, to dig a little bit deeper as to what his concerns are
5 and see if we might be able to address them? Would that --

6 MR. GROSSMAN: I mean, I can take a recess and let
7 you folks discuss it for a bit but that=s my, my concern is
8 that given that you have opposition here, that they haven=t
9 had an opportunity to look at what you produced.

10 Also, I should mention that you filed an amended,
11 an attempt to amend the application on June 14 not giving us
12 enough time to put that out with a notice of amendment
13 giving 10 days in advance of the hearing and so the rules,
14 the Board rules require under those circumstances, the Board
15 of Appeals rules require under those circumstances that we
16 keep the record open for at least 15 days after the hearing
17 in order to give any party an opportunity to respond to the
18 amended papers. I take it that you would have no objection
19 to that if we do go forward today and that you would waive
20 any Shot Clock issues for that extension of time.

21 MR. HUGHES: Yes, sir.

22 MR. GROSSMAN: Okay. All right. Let me take a
23 recess. It=s now eight minutes to 10, give you until 10:00
24 to talk to Mr. Barge to see if he wants to go forward today.

25 MR. BARGE: I=d like to present my case here.

1 MR. GROSSMAN: Oh, but that=s the point. The
2 question is, Mr. Barge, if your objection is upheld, then we
3 might have to continue the proceeding to another day. If
4 you wish to go forward today, then, you know, then we would
5 go forward today so that=s, that=s part of the question. I
6 mean, I guess there are other possibilities. I guess we
7 could hear some of the evidence and not the expert witness
8 and come back at another day but I don=t know if that would
9 make too much sense. So that=s part of the question,
10 whether you want to proceed today in spite of the fact that
11 you have this, that Mr. Hughes has not filed the statement
12 of what the expert will testify to. So anyway, I=m going to
13 give you a little bit of time. I=ll give you five minutes
14 or so until 10 --

15 MR. BARGE: Can I state my reasoning?

16 MR. GROSSMAN: Certainly, sir.

17 MR. BARGE: For me to, I have a speech defect and
18 for me to go through answering questions with him and me
19 coming back again, if I have to, I=ll come back again but
20 I=d like to get this over with.

21 MR. GROSSMAN: Sure. And we=re here today on a
22 proceeding. We=d like to have it handled today as well
23 because we sent out notice to everybody, it costs us money
24 to do that again and so on.

25 MR. BARGE: Right.

1 MR. GROSSMAN: So we certainly want to have it
2 happen today if possible but I want to protect your rights
3 and part of, and I want to make sure that you are not
4 surprised by anything that Mr. Hughes may raise and that=s
5 why I=m suggesting that the two of you talk for a few
6 minutes and I come back at 10:00 today, which is in five
7 minutes or so, and then you folks can talk. You=re free to
8 talk to Mr. Hughes for a few minutes and then I=ll come back
9 and then you can decide what you want to do. Yes, Mr.
10 Barge?

11 MR. BARGE: I went through this once before years
12 ago, which I=ll explain here before the meeting, and they
13 didn=t ask me any questions and I won that case for the area
14 and they didn=t ask me. There were four lawyers
15 representing the client for the cellular tower. They didn=t
16 call it the cellular telecommunications facility.

17 MR. GROSSMAN: Right.

18 MR. BARGE: It was called a cellular tower for
19 phones and they didn=t ask me prior to the hearing questions
20 why do you object, what do you want, what are you going to
21 say. They didn=t ask me anything. I just went ahead and
22 presented my case.

23 MR. GROSSMAN: Right.

24 MR. BARGE: And some other people. We first went
25 to Park and Planning. That was 50 percent. If you won at

1 Park and Planning, all the neighbors went with me to Park
2 and Planning and if you won there, Dave Richardson was
3 there. He was --

4 MR. GROSSMAN: All right. But let me interrupt
5 you, sir, because we're getting a little bit off the point
6 here. What I'm trying to say is I'm trying to protect your
7 rights by giving you the opportunity to object to the
8 hearing proceeding today without having gotten advance
9 notification from Mr. Hughes of his expert witness and what
10 she's going to say. If you want to proceed today in spite
11 of that and let Mr. Hughes present his witnesses, we can go
12 ahead and proceed today if that's your preference.

13 MR. BARGE: Yes, it is.

14 MR. GROSSMAN: Okay. All right. Well, I think
15 that handles that question.

16 MR. HUGHES: Thank you, Mr. Barge.

17 MR. GROSSMAN: All right. Now, let me proceed to
18 -- all right. So we will proceed today but we will keep the
19 record open for 15 days at least after today's proceeding if
20 anybody else wishes to file something so they will have the
21 opportunity to respond to the amendment, to the application
22 as well as to the statement of the expert. I had a little
23 difficulty reading the tax account number on your
24 application, the handwritten thing, so I want to make sure
25 that we get that straight and you can tell me if that in

1 fact is, if you have them there.

2 MR. HUGHES: Yes, sir. I'm just going to look on
3 the plan.

4 MR. GROSSMAN: Okay. Oh, it's right on the plan.
5 Okay. 03035624?

6 MR. HUGHES: Three 0s and then 35624.

7 MR. GROSSMAN: Three 0s?

8 MR. HUGHES: Yes, sir.

9 MR. GROSSMAN: All right. Three 0s. Three0s and
10 then 3-5, wait a minute, 030?

11 MR. HUGHES: Yes. Three 0s, then 3-5.

12 MR. GROSSMAN: 00035 --

13 MR. HUGHES: 624.

14 MR. GROSSMAN: -- 624, okay.

15 MR. HUGHES: Yes, sir.

16 MR. GROSSMAN: All right. Now, I couldn't find a
17 landscape and lighting plan, only your site plan. I take it
18 that -- you indicate some trees on your site plan. I take
19 it that your site plan will indicate all of the intended
20 plantings?

21 MR. HUGHES: Yes, sir.

22 MR. GROSSMAN: Okay. All right. And all of the
23 lighting?

24 MR. HUGHES: Yes, sir.

25 MR. GROSSMAN: All right. And I'd also ask that

1 you have one of your witnesses explain exactly what the
2 concealment pole, this described as, the cell tower is
3 described as a concealment pole, exactly what that means in
4 the context of a cell tower. All right. Are there any
5 other procedural or preliminary matters?

6 MR. HUGHES: Yes, sir. Two, please. I'm sorry.
7 Let me just write that one quick note down. Can you hold
8 this for one second? Yes, sir. I wanted to first of all
9 give you the Affidavit of Posting.

10 MR. GROSSMAN: Okay.

11 MR. HUGHES: Original here from Ms. Morrison.

12 MR. BARGE: If I ask you to take up my two awards
13 by the County, could you take that up so I wouldn't have to
14 walk?

15 MR. GROSSMAN: The Affidavit of Posting will be
16 Exhibit 19.

17 MR. HUGHES: Thank you.

18 (Exhibit No. 19 was marked for
19 identification.)

20 MR. BARGE: I was Farmer of the Year.

21 MR. HUGHES: And --

22 MR. GROSSMAN: Hold on one second.

23 MR. HUGHES: Yes, sir.

24 MR. BARGE: In 2004.

25 MR. GROSSMAN: Mr. Barge?

1 MR. BARGE: Yes, sir.

2 MR. GROSSMAN: The Affidavit of Posting that=s
3 just been filed is an affidavit from the applicant saying
4 that they had the notice sign posted on the property for the
5 required period of time.

6 MR. BARGE: They have.

7 MR. GROSSMAN: Okay. All right. And what else
8 did you want to add?

9 MR. HUGHES: Yes, sir. I wanted to ask the
10 Hearing Examiner to consider a slight alteration to the
11 plan. There=s been some question from Staff and concerns
12 about not meeting the one-for-one setback and I=ve talked to
13 some of the people here. T-Mobile is hoping that you would
14 consider accepting a modification, a slight modification
15 that moves the pole a little bit south and meets the one-
16 for-one, exceeds the one-for-one setback so the setback
17 waiver reduction could be withdrawn.

18 MR. GROSSMAN: Well, that=s more than a little
19 movement because right now it=s 48 feet, is that correct?

20 MR. HUGHES: No. Right now I believe it is --

21 MR. GROSSMAN: And it would be, well, it has to
22 move to 155 feet?

23 MR. HUGHES: Well --

24 MR. GROSSMAN: So --

25 MR. HUGHES: Right now, I think it=s 60 --

1 MR. GROSSMAN: I=m sorry.

2 MR. HUGHES: -- 64 feet right now.

3 MR. GROSSMAN: It=s 64 feet, okay.

4 MR. HUGHES: Yes.

5 MR. GROSSMAN: So it would still have to move --

6 MR. HUGHES: It would still, it would still be
7 moving south on the property but it would be meeting, it
8 would still be in the general area and it would meet this
9 concern raised by the Staff and raised by some of, raised in
10 a letter from the MCA which also included Sugarloaf.

11 MR. GROSSMAN: Right. So it would be moving to
12 what, at least 155 feet?

13 MR. HUGHES: Yes.

14 MR. GROSSMAN: From the --

15 MR. HUGHES: The reason why we believe it=s a
16 somewhat minor change in that the parcel is 10 acres. As
17 far as notice goes to everyone, it=s still a special
18 exception. It=s still the same height of a tower. It=s
19 still in the general location but it has taken away the
20 issue, potentially would take away the issue of a setback
21 reduction, of not meeting setback in one direction.

22 MR. GROSSMAN: Do you have balloon tests showing
23 you at the proposed location?

24 MR. HUGHES: At, we have --

25 MR. GROSSMAN: At the newly proposed location.

1 MR. HUGHES: No. We don=t -- well, we didn=t, you
2 know, 30 yards we don=t see would be a material change from
3 the visibility from different vantage points.

4 MR. GROSSMAN: But how am I going to assess that
5 without having the balloon tests and having Staff have the
6 opportunity to look at it at the new location. I know that
7 Staff had raised the issue.

8 MR. HUGHES: Well, but Staff put a condition.
9 Their alternative position in the Staff report was if we
10 meet the one-for-one setback, that then they would recommend
11 approval.

12 MR. GROSSMAN: Right. I understand. I read the
13 Staff report. My concern is that changing it at this point,
14 maybe it changes what the Tower Commission would say. I
15 mean, I have no idea how to assess that at this hearing
16 without your having had this done in advance where Technical
17 Staff could look at it and the Tower Commission could look
18 at it.

19 MR. HUGHES: I guess I hear your point. I guess
20 my only thought is first of all, Technical Staff has pretty
21 much already, we=ve had multiple discussions with them and
22 they in fact have wanted this to happen quite a bit clearly.
23 And they=ve, in their report, they recommended that they
24 would, their concerns would go away. Their grave concerns
25 they have where it is but when we switch it these 30 yards,

1 they would then be supportive. Based upon the photo
2 simulations, they could be done, if you would be so kind to
3 leave the record open, they could be submitted but just
4 based upon 30 yards, the visibility, the grand scheme would
5 not be large and we just, we believed that there is some
6 practice of when minor adjustments occur, that sometimes
7 they do happen. Granted, I wish we could have done this
8 earlier but it seems to have, at least we believe it has the
9 support of Staff now and I believe also, of MCA.

10 MR. GROSSMAN: Well, minor adjustments are one
11 thing. I will allow and encourage minor adjustments that
12 will benefit everybody, and I'm not saying that moving this
13 to a new location would be a bad idea. What I'm saying is
14 that it's a question of what evidence there will be in the
15 record that would allow me to fairly evaluate it, evidence
16 submitted at a hearing that is subject to cross-examination
17 such as the balloon tests which I don't know if you have
18 coverage charts that cover the newly proposed location.
19 They're not in the record either.

20 MR. HUGHES: No. But we have our witness who can
21 testify and I think his testimony will be with 30 yards,
22 it's not a material change to the coverage either.

23 MR. GROSSMAN: I understand what you're saying. I
24 don't think that there will be a sufficient record for me to
25 evaluate it considering what there might be from the

1 opposition standpoint. I mean, you may put on a sufficient
2 record to say, although without the balloon tests, I don=t
3 see how you could, but you might put on evidence in that
4 regard but I don=t see how I=ll have the ability to assess
5 it based on what the objective evaluation of the Technical
6 Staff and of any of the opponents here.

7 MR. HUGHES: The Technical Staff has weighed in
8 already and --

9 MR. GROSSMAN: They=ve weighed in on, based on a
10 certain location and they said that from a standpoint of
11 viewing it, that they would prefer if it were moved and, or
12 at least they said that the setback waiver that you
13 requested was not justified and the present location was not
14 the best location. I=m not entirely sure that they have
15 endorsed the location that you=re suggesting. It seems to
16 me -- and it may be, it may be the best location. The
17 problem is timing. That=s why I had somebody call your
18 office to see if you were still going to go forward today
19 after seeing the Staff Report because I thought that if you
20 wanted to move it, that you would take some steps but not on
21 the day of the hearing. It=s late.

22 MR. HUGHES: It certainly is late. When we
23 learned from Staff that they really were taking this
24 position, we certainly did a lot of work the past few days
25 to try to see if we could propose this and if you=re, I

1 don=t know if you=re so inclined to either not grant this or
2 to take it under advisement, maybe if I could have a few
3 minutes with my client to see if we still want to proceed if
4 we=re not able to make this amendment.

5 But I guess our thought was Staff does show in
6 their report an area they see meets the one-for-one and they
7 said they would support. We=re proposing our plan that we
8 would show you, if you wanted to see it, shows it in that
9 area so I believe that Staff is supportive now, I believe it
10 takes away MCA=s concerns and Mr. Barge is here to voice any
11 concerns or to look at this. Again, I believe testimony
12 will come out that his house is about .4 miles away or
13 greater so I=m not saying -- he has a right to disagree with
14 us and not like it but 30 yards is not going to, I don=t see
15 how 30 yards will change his view per se. He could, he may
16 still like it or dislike it just as much.

17 MR. GROSSMAN: Well, I know but it=s not just Mr.
18 Barge. It is anybody else. This is a public filing and a
19 public hearing. If you move it to 30 yards, it may be that
20 the people across the street may say gee, that=s a problem
21 for me, I can view it now. I don=t know. But they=ll be
22 the ones that will be in a position to evaluate it once this
23 is published so the problem is it=s not just Mr. Barge or
24 Ms. Sturm. It=s the, it=s everybody else who hasn=t had any
25 notice of the newly proposed location. Of all the kinds of

1 special exceptions, it seems to me the location of a tower
2 is one in which you=d want to have that, that=s the one you
3 can least change the day of the hearing.

4 MR. HUGHES: Well, I agree with that. I guess I
5 would say, and we can differ on what we think is a minor or
6 material change, I just, you know, if we put it, moved it,
7 you know, towards the front of the property or if we moved
8 it a few hundred yards, I don=t see how this would change
9 the Tower Committee review at all. I just don=t -- if
10 people had notice of this on this property, if they had
11 concerns, I think they=d be here whether it=s 30 yards this
12 way or 30 yards that way.

13 MR. GROSSMAN: I don=t know that and I don=t think
14 it=s fair of me to anticipate that. I think people have a
15 right to know where the tower is going to be and to, and to
16 object if they wish to. I think this is late to have a
17 tower location.

18 MR. HUGHES: Could I indulge you, sir, to have
19 five minutes to talk to my client to see if --

20 MR. GROSSMAN: Right. You can. And what I=m
21 going to suggest is the possibility, in view of this
22 development, is that you, we permit, we go ahead to this
23 extent. We allow Mr. Barge to testify so he doesn=t have to
24 come back if he doesn=t want to and then we set, you file
25 your materials and we set another date to come back here so

1 that anybody else who wishes to appear in reference to the
2 new location can appear because I don=t see a better way of
3 handling it right now but you=re welcome to. How much time
4 do you want to consult with your client?

5 MR. HUGHES: About five minutes, sir.

6 MR. GROSSMAN: Okay. All right. So it=s now 10
7 after, it=s now 7 after 7. I=ll come back in about five
8 minutes at about 12 after.

9 MR. HUGHES: Thank you, sir.

10 MR. GROSSMAN: 10 I should say. I said 7. We=re
11 recessed for five minutes.

12 (Whereupon, at 10:06 a.m., a brief recess was
13 taken.)

14 MR. GROSSMAN: Let=s go back on the record. So
15 what do you want to do, Mr. Hughes?

16 MR. HUGHES: Yes. Thank you, Mr. Grossman. After
17 talking with my client, we would appreciate the opportunity
18 to come back at a later date.

19 MR. GROSSMAN: And I just want to make sure it=s
20 on the record that you will waive any Shot Clock arguments
21 in this case given the delay inherent to your changes.

22 MR. HUGHES: Related to the new hearing or
23 forever?

24 MR. GROSSMAN: Well, actually, I=d like it
25 forever. I don=t know what=s going to happen at the next

1 one but at the very least, related to the delays occasioned
2 by changing --

3 MR. HUGHES: Yes, sir.

4 MR. GROSSMAN: -- the site location. All right.
5 And however, we would like to give Mr. Barge and Ms. Sturm
6 an opportunity if they do not wish to return another day.
7 Let=s have you file first so they have something that you
8 file. Let=s have you file what it is that the, the new
9 location that you have and any documentation that you have
10 relating to that. Do you understand, Mr. Barge, what=s
11 happening here now?

12 MR. BARGE: I think I do.

13 MR. GROSSMAN: Okay. I=m going to explain it.
14 Part of the problem with the proposed tower that the
15 applicant is proposing here is the location was within what
16 they call a setback. That is there are certain provisions
17 in the Code that say that a cell tower must be at a certain
18 distance from the property line. Where they proposed to
19 site this cell tower did not meet that requirement. It=s
20 too close to the property line and so what, and so the
21 Technical Staff -- this case is reviewed by what they call
22 the Technical Staff of the Maryland-National Capital Park
23 and Planning Commission and the Technical Staff issues a
24 report which is quite lengthy and evaluates -- here=s a copy
25 of it. If you haven=t seen it, we=ll make one available to

1 you.

2 They evaluate the case and one of the things they
3 pointed out, they recommended denial of this application
4 because the tower in question was sited within the setback.

5 In other words, it didn=t meet the requirement of being set
6 back the required number of feet, one foot for every foot of
7 the height of the tower, from the property line. And so now
8 the applicants are requesting that they be allowed to move
9 the tower location to a location which will meet the setback
10 and that may be fine and it may be in accordance with what
11 was suggested by the Technical Staff but the problem is that
12 all of the neighbors have not had an opportunity to examine
13 the effects of the tower, the view of the tower from the new
14 location that=s proposed.

15 And when they propose a cell tower, they have to
16 do what they call balloon tests or some tests that will show
17 people photographically from what locations the tower will
18 be visible and they haven=t, they don=t have such a test for
19 this new location at this stage. And so that=s why we don=t
20 want to proceed with the full hearing today until, because
21 the applicant has not given the public the opportunity to
22 look at the effects of the tower at the proposed new
23 location.

24 On the other hand, we don=t want to inconvenience
25 you so I=m going to give you and Ms. Sturm the opportunity,

1 if you wish to testify today regarding this tower, to
2 testify and then we=re going to set a new date and then if
3 you wish to return, you will have the option of returning if
4 you wish, okay? So that=s what we=re going to do. We=re
5 going to put your testimony on the record and allow you to
6 return if you wish to testify regarding the new location as
7 proposed. First we=re going to get Mr. Hughes to put into
8 evidence the new plans that he is proposing so, Mr. Hughes?

9 MR. HUGHES: Yes, sir. Before I give that to you,
10 could I take 30 seconds to give them current and new just so
11 they can see? That might help their testimony.

12 MR. GROSSMAN: Well, you can present it as part of
13 an opening statement.

14 MR. HUGHES: Okay.

15 MR. BARGE: May I ask a question, sir?

16 MR. GROSSMAN: Yes, sir.

17 MR. BARGE: Since Park and Planning made this
18 decision, you had some papers up in front of you.

19 MR. GROSSMAN: Yes.

20 MR. BARGE: There has to be so many feet from a
21 property line.

22 MR. GROSSMAN: That=s correct.

23 MR. BARGE: Was he also appraised, apprised of
24 this fact?

25 MR. GROSSMAN: He was.

1 MR. BARGE: Well, why did he have all this time,
2 and he was told about this. Why didn=t he amend his
3 application at that point so it wouldn=t put the County and
4 the people at inconvenience to come back again? Since he
5 knew about it from Park and Planning, why didn=t he do his
6 paperwork before he came down here and have all that
7 resolved?

8 MR. GROSSMAN: That=s a fair point and however, by
9 statute, the Staff Report has to be filed five days in
10 advance, five work days in advance of the hearing. They
11 filed it on June 17th which is meeting the requirement,
12 that=s one calendar week or five business days in advance.
13 That still wouldn=t give the public enough notice time to,
14 if he were to change his plans right then, that wouldn=t
15 give the public sufficient notice time of the change in the
16 location.

17 And so in fairness to all sides, I=m going to give
18 him the opportunity to come back at another hearing date.
19 However, I=m also going to give you the opportunity to
20 testify today so you don=t have to be inconvenienced.
21 You=ll see what the plan is right now that they plan to put
22 up and then you can, you have the option of coming back. If
23 in fact the Staff report had been issued three weeks ago,
24 then I would feel differently and I=d say they should have
25 made this change earlier and there=s no reason for us to

1 have to come back again but since they, since the Staff
2 report only was issued a week ago --

3 What=s happened is there is a rule that has been
4 initiated by the Federal Communications Commission that
5 compresses all the time limits in these kinds of cases and
6 as a result, the Staff reports in these kinds of cases were
7 usually out well in advance of hearing dates but now we=ve
8 had to compress the calendar in order to meet the FCC rule
9 that compresses the time elements and so Staff reports are
10 coming out, as I say now, one week in advance of the hearing
11 which it=s an unfortunate change but in any event.

12 So let me turn back to -- Ms. Sturm, by the way,
13 do you have any questions about these proceedings at this
14 point?

15 MS. STURM: No.

16 MR. GROSSMAN: Okay. So let me turn back to Mr.
17 Hughes and find out what it is that you=re planning, Mr.
18 Hughes.

19 MR. HUGHES: Yes, sir. Mr. Grossman, what I=d
20 like to give you a smaller version of a plan that=s now
21 dated 6/22.

22 MR. GROSSMAN: Okay.

23 MR. HUGHES: And we also have a larger version
24 here.

25 MR. GROSSMAN: All right. So let=s -- would you

1 mark on the larger version, that=s Exhibit 20. And so this
2 is a revised site plan.

3 MR. HUGHES: Yes, sir.

4 MR. GROSSMAN: Of 6/22/11. And we=ll mark the
5 smaller version, oh, I see. It=s two pages. Did you change
6 the second page at all, the --

7 MR. HUGHES: Yes. Related to this change. Yes,
8 sir.

9 MR. GROSSMAN: So that will be, the larger site
10 plan is, page 1 is 20A and the blowup, page 2, would be 20B.

11 (Exhibit Nos. 20A and 20B were marked
12 for identification.)

13 MR. GROSSMAN: And Exhibit 21A and B will be the
14 reduced version.

15 (Exhibit Nos. 21A and 21B were marked
16 for identification.)

17 MR. GROSSMAN: I should say 11 x 14 version.

18 MR. HUGHES: 11 x 17.

19 MR. GROSSMAN: 11 x 17, I=m sorry.

20 MR. HUGHES: Sure.

21 MR. GROSSMAN: All right.

22 MR. HUGHES: And so I guess I=ll, I=ll just make a
23 quick explanation to the material change here but if I
24 could, I guess I would like to reserve my opening statement
25 for when we come back.

1 MR. GROSSMAN: Certainly.

2 MR. HUGHES: But the big change, to give,
3 orientate all of us is so the plan that=s dated 6/6, the one
4 we came here today envisioning, had setbacks, the key
5 setback where we were asking for a waiver was we were 60
6 feet off the property to, 64 feet off the property to the
7 north. Now, we=re proposing that it would be approximately
8 198 feet. And the setbacks, the other setbacks would still
9 remain pretty similar but going to the east to the road,
10 instead of being 856, it would be 847 to the --

11 MR. GROSSMAN: Let=s take it. So the northern one
12 moves from 64 to 198, right?

13 MR. HUGHES: Yes, sir. Yes, sir.

14 MR. GROSSMAN: The eastern one moves from what?

15 MR. HUGHES: From 856 to 847.

16 MR. GROSSMAN: Okay.

17 MR. HUGHES: The -- apologize. The west goes from
18 241 to 249.

19 MR. GROSSMAN: Okay.

20 MR. HUGHES: And the south goes from 330 to 195,
21 so sliding it down more towards the middle of the property.

22 MR. GROSSMAN: Okay. And I take it that when we
23 come back for the rest of the hearing, that you will have
24 had balloon tests and testimony that will be key to the new
25 location. And we=ll talk also about, after Mr. Barge and

1 Ms. Sturm have come up to testify if they wish to now, we'll
2 talk about the question of whether or not this has to go
3 back to the Tower Commission. But anyway, let's deal with
4 that after we give them an opportunity to testify. Is there
5 anything else that you wanted to submit? I guess you, I
6 presume you have a new proposed statement that supported the
7 application that shows the new location, et cetera.

8 MR. HUGHES: We will submit that. We don't have
9 that today.

10 MR. GROSSMAN: You don't have that. Okay. All
11 right. Is there anything else before we turn to Mr. Barge
12 and give him an opportunity to testify?

13 MR. HUGHES: No, sir.

14 MR. GROSSMAN: All right. Mr. Barge, would you
15 raise your right hand, please?

16 (Witness sworn.)

17 MR. GROSSMAN: All right, sir. You may proceed
18 and make whatever statement you wish and once again, you can
19 testify now, you can come back and testify further later if
20 you wish based on the changes or you can just testify later.
21 Whichever you prefer.

22 DIRECT EXAMINATION

23 THE WITNESS: When I say something and if you
24 object, I'll keep quiet.

25 MR. GROSSMAN: Okay. Fair enough.

1 THE WITNESS: Now, my first impression about all
2 this, when they filled out the papers for the cellular phone
3 tower, they can call it any name you want,
4 telecommunications, it=s still a cellular phone tower.

5 MR. GROSSMAN: Yes.

6 THE WITNESS: A duck is a dog that walks like a
7 duck, quacks like a duck. But when they filled out these
8 papers about the setback for the proposed tower, they should
9 have, they=ve been involved in this before and they should
10 have known this but a friend of mine said the other day, I
11 was at McDonald=s having coffee and a friend of mine said
12 they=re going to pull delaying tactics. They=ll say we
13 didn=t know about the setback, we=re going to do now, we
14 want to amend the plan and come back another day. He said
15 by that time, all the people that came will give up. They
16 say why go back. That=s, I like to say, the end of the
17 conversation.

18 Now, to get back, to get to my program, my name is
19 Emory Barge. I live at 21910 Whites Ferry Road. I have a
20 170-acre cattle farm and I ran beef cattle up until 2005
21 when I had my stroke, and now I lease the land out for
22 crops, hay and going into soy beans and going into corn, and
23 I=ve always prided myself on environmental issues on the
24 farm, 170 acres. I=m .07 of a mile from the corner of my
25 property to this proposed tower.

1 MR. GROSSMAN: Yes.

2 THE WITNESS: And in fact, I went into a program
3 with the State, County act plant trees. The trees are up
4 now about 20, 30 feet and I=ve always been environmental. I
5 gave up like 30 acres for trees to the County and the State.
6 And last year, I mean, before, a year before I had the
7 stroke, the County, if you=d like to see this, she said she
8 would take it up to you, these two, they named me as
9 Cooperator of the Year, Farmer.

10 MR. GROSSMAN: All right.

11 THE WITNESS: The State and County and --

12 MR. GROSSMAN: The problem with my viewing it is
13 that I=d have to make it an exhibit if I=m to consider it as
14 part of this and I=m sure you don=t want me to keep it.

15 THE WITNESS: No.

16 MR. GROSSMAN: So let me, why don=t you just tell
17 me what it is that you have received.

18 THE WITNESS: Well, they just gave me two awards
19 for being a good farmer.

20 MR. GROSSMAN: Okay.

21 THE WITNESS: The State and the County. And one
22 of them from the Department of, the Maryland Department of
23 Agriculture, (indiscernible) Secretary citation. But let me
24 say this. It was years ago I came to a hearing on a similar
25 thing, cellular phone, down the road toward the ferry about

1 500 feet from my property.

2 MR. GROSSMAN: Yes.

3 THE WITNESS: A man by the name of Wandracome
4 (phonetic sp.) applied for a cellular phone tower and they
5 had a hearing at Park and Planning and Mr. Dave Richardson,
6 one of the commissioners, was there. He lives in
7 Poolesville. I mean, he lives in Dickerson. And so we won
8 there and from there, if you won there, you went to special
9 exception, so I came here before I had the stroke and we
10 got, I got that defeated, that cellular tower.

11 Now, the reason why I'm opposed to it, I'm in an
12 agriculture preservation district. Everything is supposed
13 to be beautiful.

14 MR. GROSSMAN: Yes.

15 THE WITNESS: And since I've owned this farm,
16 we've had trenching of sludge on Elmer School Road. Then
17 they moved in the police firing range, Elmer School Road.
18 And then the PEPCO plant. It was a (indiscernible), it's
19 now something else. And they have a County composting.
20 They take sludge and make it in, you can spread it on your
21 garden and, and the incinerator, they went up higher on the
22 incinerator and the 650 acre landfill. I have a picture of
23 the map here.

24 MR. GROSSMAN: Well, if you want to introduce a
25 map --

1 THE WITNESS: No.

2 MR. GROSSMAN: -- or something, I can mark it as
3 an exhibit.

4 THE WITNESS: So his, so when I was at Bob Evans
5 restaurant before the hearing, I was talking about, up in
6 Frederick, I was talking about this thing, there=s this
7 hearing I=m going to on, this is back in 10, 15 years ago.

8 MR. GROSSMAN: Well, let=s try to hone into today.

9 THE WITNESS: Okay. Today --

10 MR. GROSSMAN: What your concerns are about the
11 proposal today.

12 THE WITNESS: Well, we have to look at the thing,
13 and this is supposed to be a beautiful agricultural area.
14 They=re in it for the money. For the money only. They get
15 paid, and you can ask him how much they=re going to pay this
16 man a year and how many years they=re going to pay him to
17 put that tower in. Everybody want to go in and get rich.
18 They don=t care about the beautiful, about how beautiful,
19 ugly it=s going to make the place. The place is being
20 slowly made ugly and I=ve tried to make my farm, my 170-acre
21 farm beautiful so the bicyclists right down Whites Ferry
22 Road toward the ferry --

23 MR. GROSSMAN: Right.

24 THE WITNESS: -- they look at it and they have
25 something to look at. And people that drive through for

1 picnics, they have something to look forward to and they put
2 this cellular tower, this ugly damn thing, and they say that
3 the man that, in Frederick said they=re not doing this for
4 Montgomery County=s purpose. They want to connect Leesburg,
5 Virginia with this cellular phone tower because I have a
6 cellular phone called a Jitterbug for disabled people, in
7 case I fall, I can call him and other people, and I can
8 call. I can use my cellular phone and I can call down here
9 on my cellular phone. I can talk to anybody. So that tower
10 is not for the benefit of the people of Montgomery County.
11 It=s to connect Leesburg, Virginia with Montgomery County.

12 MR. GROSSMAN: Well, they=re going to be -- here=s
13 the thing. As far as the need for it, they have to make a
14 showing that they have a need for it. They=ve already been
15 before, they have a Commission, a Tower Commission that
16 actually, that=s not a precise name but that=s what
17 everybody calls it around here, that looks at the question
18 of where a cell tower is proposed to be sited and then they
19 see if there actually is a need in the area, and that=s part
20 of the evidence that will be admitted here.

21 They will also be required to produce evidence and
22 the Board of Appeals can make an evaluation, some of which
23 is in the file today already, establishing that there is a
24 need for the cell tower in this general area based on
25 dropped calls or other coverage issues. And so that will

1 certainly be an issue before -- it may be that you have
2 perfect coverage in your particular location and it may be
3 that others do not so that=s going to be an issue that will
4 be before me and before the Board in this case.

5 THE WITNESS: There is a cellular phone tower down
6 River Road extension, Dave Whiteser=s (phonetic sp.) dairy
7 farm, and Dave Whiteser got the cellular tower. At the
8 hearing right after they heard my case --

9 MR. GROSSMAN: Right.

10 THE WITNESS: -- they presented his case and they
11 approved his cellular tower so we already have one. Why do
12 we need two?

13 MR. GROSSMAN: But that may or may not be -- in
14 terms of whether or not there=s enough coverage, that=s a
15 factor I=ll have to look at based on the evidence. Now, all
16 the evidence is not in yet on that but that=s what we=ll
17 have to look at for sure.

18 THE WITNESS: So when I was down here before, they
19 had several women up there and they had one man at this end.
20 It could have been you. He was a lawyer, retired lawyer,
21 and he objected. He said I don=t care about Leesburg, I=m
22 from Montgomery County. He was opposed to it, the cellular
23 tower, and we were, and we won that case. So Wandracome, he
24 didn=t get the cellular tower. Now, this isn=t too far away
25 from where the other one would --

1 MR. GROSSMAN: Let me stop you a second. When you
2 say it could have been me, just so the record is clear --

3 THE WITNESS: Oh.

4 MR. GROSSMAN: -- it wasn't I. I have no idea
5 what proceeding you're talking about.

6 THE WITNESS: Oh, there was all these women up
7 there and there was one man.

8 MR. GROSSMAN: Okay.

9 THE WITNESS: And he was a retired attorney.

10 MR. GROSSMAN: All right.

11 THE WITNESS: And he said he understood about what
12 that man up in the restaurant said --

13 MR. GROSSMAN: Yes.

14 THE WITNESS: -- about why they're building it
15 down there, they want to connect with Virginia, and he said
16 before the hearing, I don't care about Virginia, I'm from
17 Montgomery County and so --

18 MR. GROSSMAN: Let's hone in on this particular
19 thing.

20 THE WITNESS: All right. So this particular --

21 MR. GROSSMAN: I want to hear what, any objection
22 you have for this tower.

23 THE WITNESS: I'm objecting to it because we've
24 had all these things done to us in Montgomery County and I'm
25 a farmer and maybe I should go in for the money and put

1 something on my farm and make -- I mean, it=s a way of life.

2 I=m retired from the Government. I retired in >73 from the
3 Government and I bought the farm. I wanted to farm all my
4 life and I did farm. I raised cattle, did all my own vet
5 work and everything so I guess it=s in the purview. So with
6 all these things put on us, I=ve named them, the PEPCO
7 plant, trenching in the sludge --

8 MR. GROSSMAN: Right.

9 THE WITNESS: -- the police firing range. And
10 this, the other day, I cut this out of the newspaper on the
11 22nd. Today=s the 26th and I cut --

12 MR. GROSSMAN: Today=s the 24th.

13 THE WITNESS: It=s the 24th. I=m sorry. I cut
14 this out of the newspaper, the Washington Post about a Mrs.
15 Pohlmann who is the same thing. She passed away on June
16 6th, and this lady knows her. She was involved in the
17 Sugarloaf Mountain Association and this woman was also an
18 environmentalist. And she had a 172-acre farm and she
19 raised --

20 MR. GROSSMAN: Well, if you=re going to tell me
21 what she had said. I don=t know what the article is but --

22 THE WITNESS: You=re welcome to keep it if you
23 want.

24 MR. GROSSMAN: Well, that=s the question. I don=t
25 know if it=s relevant or not but if you --

1 THE WITNESS: Well --

2 MR. GROSSMAN: -- want to introduce it, I'll mark
3 it as an exhibit and we'll see.

4 THE WITNESS: It says activist fought for rural
5 preservation, so she passed away but she fought a good fight
6 before she died.

7 MR. GROSSMAN: All right. That=s an obituary. I
8 don=t think that=s, I don=t think her obituary is relevant
9 to our proceeding.

10 THE WITNESS: I think if she would have lived, she
11 would have been here.

12 MR. GROSSMAN: I believe it.

13 THE WITNESS: In fact, the developers didn=t like
14 her. The developers said to her that --

15 MR. GROSSMAN: Well, no, no, no. Don=t tell me
16 what somebody else said.

17 THE WITNESS: Oh, that=s right. I don=t have --

18 MR. GROSSMAN: I don=t think that=s really
19 relevant.

20 THE WITNESS: I see Judge Judy and she says a lot
21 of times, don=t tell me what the other person said. Now, if
22 you have a letter, she says that. Judge Judy says if you
23 have a letter. So I watch, I=m familiar with the law.
24 Perry Mason, you know, that sort of thing. But we=ve had
25 enough things done to us out there and the people in my

1 area, even though they, I try to get them to come down, they
2 say well, I don=t want to get involved, I don=t -- nobody
3 wants to get involved.

4 MR. GROSSMAN: Right.

5 THE WITNESS: They=re in a shell. But certain
6 people, I don=t have -- I=m 83 so I don=t have too long to
7 live anyway so I can go to jail. Bernie Madoff, I=ll be in
8 the same cell. I don=t care what people say so I get up, I
9 say my peace.

10 MR. GROSSMAN: All right.

11 THE WITNESS: And this is only benefitting one
12 thing. Mr. Ammerman will get, is it a yearly check or a
13 monthly check?

14 MR. GROSSMAN: Well, no. You can=t ask him any
15 questions right now.

16 THE WITNESS: Oh, I can=t ask him. Well, he=ll
17 get a check, monthly or yearly, and he gets the money out of
18 it. It=s the money. It=s not the beautification.
19 Destroying the area, the area, the ambience of the area so
20 the people that do it, it=s the money, it=s the dollar. So
21 they=re doing it for one reason. They don=t care about the
22 area. But I have to look at that thing from my farm.
23 Location, location, location. It devalues my farm.

24 MR. GROSSMAN: Okay.

25 THE WITNESS: The value of the property. You can

1 ask me anything.

2 MR. GROSSMAN: All right, sir. Thank you. Cross-
3 examination?

4 MR. HUGHES: Just a few questions. Thank you.

5 MR. GROSSMAN: All right.

6 CROSS-EXAMINATION

7 BY MR. HUGHES:

8 Q Mr. Barge, just how did you learn about this
9 application?

10 A Well, I drive by that sign all the time.

11 Q Okay. Thank you. And I'm going to ask if you are
12 able to recognize a document.

13 MR. HUGHES: I'll give you a copy, Mr. Grossman.

14 MR. GROSSMAN: All right. This is, is this an
15 exhibit?

16 MR. HUGHES: Yes, sir.

17 MR. GROSSMAN: In the file already?

18 MR. HUGHES: No, sir.

19 MR. GROSSMAN: Okay. Let's mark it as an exhibit.
20 Exhibit 22.

21 (Exhibit No. 22 was marked for
22 identification.)

23 BY MR. HUGHES:

24 Q And I apologize, Mr. Barge, I should have a larger
25 version. I don't. Is this your farm right around here

1 where this orange dot is, sir?

2 A Let me see here.

3 Q Correct? This is Whites Ferry and here=s Wasche
4 intersection.

5 A The corner of my farm is right here.

6 Q Okay. At the intersection.

7 A At the intersection.

8 Q It=s at the southwest intersection, sir?

9 A I guess so. So it=s .07 of a mile from where
10 you=re going to put this horrible tower.

11 Q Okay. Can --

12 MR. GROSSMAN: Would you mark it on the, mark the
13 location of your farm on Exhibit 22?

14 THE WITNESS: Well, I don=t want to draw on his --

15 BY MR. HUGHES:

16 Q No, it=s okay. You can write on that, sir. Yes,
17 sir.

18 A And I=m 0.7 a corner of my property.

19 Q Okay.

20 A See, the road is called Wasche Road that the
21 tower=s on but the continuance of Wasche Road is Edwards
22 Ferry Road and I=m on the corner. It=s the same road as
23 Wasche Road except it=s across Whites Ferry.

24 Q Mr. Barge, are you able to identify on this map
25 where the Ammerman property is?

1 A According to this map?

2 Q Yes, sir.

3 A I don=t -- I can do it on this map.

4 Q Do you know if this is, is this is around here, do

5 you know?

6 A I=d have to have a protractor and --

7 Q Okay.

8 A -- go .07 of a mile from the corner of my --

9 Q That=s okay.

10 A Now, can I ask him a question?

11 MR. GROSSMAN: No. Not at this stage.

12 BY MR. HUGHES:

13 Q Thank you, sir.

14 THE WITNESS: I can=t ask him anything?

15 MR. GROSSMAN: No, because the proceeding is that

16 you=ve testified and then he has the right to ask you

17 questions about your testimony. He=ll call witnesses at the

18 hearing that we set up and then you can cross-examine any of

19 his witnesses. You can ask them questions.

20 MR. HUGHES: This is where he=s kind of marked his

21 farm.

22 MR. GROSSMAN: Okay.

23 THE WITNESS: It=s on the corner.

24 MR. GROSSMAN: All right. So that=s, make this

25 Exhibit 22.

1 MR. HUGHES: Should I keep that one or do you need
2 both? If you want them both, that=s fine.

3 MR. GROSSMAN: Well, I was just going to -- you
4 can have that back if you want.

5 MR. HUGHES: Because that=s the one he=s marked.

6 MR. GROSSMAN: You=re right.

7 MR. HUGHES: Thank you.

8 MR. GROSSMAN: The big "X" indicates the location
9 of Mr. Barge's farm, right?

10 MR. HUGHES: Yes.

11 MR. GROSSMAN: So that Exhibit 22 says map showing
12 location of Barge Farm marked by "X".

13 BY MR. HUGHES:

14 Q Mr. Barge, I think you mentioned you used some
15 type of wireless phone service, so is it true that you or
16 your family members use wireless phones?

17 A I don't have a family.

18 Q But you use a wireless phone, is that correct? Do
19 you have the ability?

20 A Only if I fall. I can use it to call from there
21 without the cellular tower.

22 Q Okay. And it's called Jitterbug, is that right?

23 A Jitterbug. And he can call on his phone. We can
24 do it today. We'll give you a call. He can call from the
25 property on his cellular phone.

1 MR. GROSSMAN: Who is the he you're referring to?

2 THE WITNESS: Who?

3 MR. GROSSMAN: Who? You said he could call.

4 THE WITNESS: Oh, Mr. John Anderson. He's my
5 friend. He has a farm in Damascus.

6 MR. GROSSMAN: Okay.

7 THE WITNESS: He's a farmer also.

8 BY MR. HUGHES:

9 Q Mr. Anderson uses a wireless phone, is that
10 correct?

11 A He sure does.

12 Q Okay.

13 A All the time.

14 Q And your Jitterbug phone, how many times have you
15 actually had to use it and call on it?

16 A Maybe four or five times but it works. His works.
17 You can -- his works from that area.

18 Q Okay.

19 A They're not doing it because they don't get
20 reception. They get, people get reception. All those --
21 Mr. Ammerman has a phone, right, he lives there. He can
22 tell you he can call anybody he wants in Rockville,
23 Pennsylvania. I had a friend who called from California the
24 other night on a cellular phone. On a cellular phone.

25 Q Mr. Barge, so do you know what company, you have a

1 Jitterbug phone but who is the wireless company that
2 provides that service? Is it AT&T, Sprint, T-Mobile,
3 Verizon?

4 A I just pay them monthly. I don't ask questions.

5 Q Okay. All right. Do you understand that in order
6 for wireless phones to work, there has to be antennas nearby
7 them? Do you understand that?

8 A Well, how come I can use mine and I'm just .07 of
9 a mile from the proposed site? So how can I, how come I can
10 use mine and --

11 Q I'm just asking if you understand the technology.
12 Do you realize that --

13 A I'm not an engineer.

14 Q Okay. You obviously have been farming since at
15 least 1973. Do you believe that wireless connectivity is
16 something that has helped the farming industry?

17 A Never helped. I never had one before I had the
18 stroke. I just got it December for a Christmas present. He
19 gave it to me for Christmas present this last Christmas. I
20 never had a cellular --

21 MR. GROSSMAN: All right. But I think you've
22 answered the question. You've answered the question.

23 BY MR. HUGHES:

24 Q Do you know any farmers who use wireless phones?

25 A Yeah.

1 Q Okay.

2 A And they're farther from this property.

3 Q Did you realize that this proposal, this proposed
4 telecom facility or cell tower does not have any lights on
5 the top of it? Are you aware of that?

6 A Since I had one defeated, I don't know what's on
7 top of it.

8 Q Okay. Are you aware that there are some towers in
9 and around your area of the County, Montgomery County, that
10 do have lights on it because of aviation?

11 A I don't know.

12 Q You've never seen any towers with lights on at
13 night?

14 A Not from my farm. That's why I don't want this
15 one to go up.

16 Q Well, this one doesn't have a light is what I --

17 A Well, I don't want it.

18 Q -- was asking about before. Okay. Do you know
19 the difference between a monopole type structure and a
20 lattice tower?

21 A You're asking me architectural questions. A
22 cellular phone tower is a tower -- I've seen them.

23 Q Yes.

24 A It's a tower 155 feet up. You can't miss it. It
25 doesn't make the area beautiful. It makes the area ugly.

1 Q So you are aware there's different types. Are you
2 aware there's also different heights?

3 A I know there's different types of buildings.

4 Q Okay.

5 A They build six-story, 10-story buildings. These
6 questions are silly.

7 MR. GROSSMAN: He's entitled to examine you with
8 this.

9 THE WITNESS: I know he's entitled but they, it's
10 a duck. It walks like a duck that looks like a duck, it's a
11 tower.

12 MR. GROSSMAN: I think that he's making, the point
13 he's making is that you can design these towers in different
14 ways and --

15 THE WITNESS: Put it on the ground.

16 MR. GROSSMAN: Well, the point is, he's making, is
17 you can design these towers in different ways and that his
18 tower is going to be designed in a certain way but that's --

19 THE WITNESS: I think T-Mobile, you were involved
20 in Wandracome's cellular tower.

21 BY MR. HUGHES:

22 Q No, sir. I was not.

23 MR. GROSSMAN: Well, let's not --

24 THE WITNESS: Okay.

25 MR. GROSSMAN: This is his time to examine you,

1 not the reverse.

2 BY MR. HUGHES:

3 Q Last question, Mr. Barge.

4 A Sure.

5 Q Are you aware that there are over 290 million
6 users of wireless phones in the U.S.?

7 A What's that have to do with it?

8 Q Yes or no?

9 MR. GROSSMAN: Well, are you aware of it or not?

10 THE WITNESS: I'm not aware of that number.

11 MR. GROSSMAN: Okay.

12 THE WITNESS: I'm not a statistician. I can't
13 tell you -- do you know when the last Model-T Ford was
14 built? The last Model-T Ford was built in 1927. That's
15 statistical. You don't know that but I know it.

16 MR. GROSSMAN: All right.

17 BY MR. HUGHES:

18 Q Fair enough. Thank you, sir. Thank you, Mr.
19 Barge.

20 MR. GROSSMAN: Ms. Sturm, do you have any
21 questions for Mr. Barge?

22 MS. STURM: No.

23 MR. GROSSMAN: Thank you very much, Mr. Barge, and
24 you, as I said, you're free to come back. You're free to
25 come back here for the next proceeding if you wish to, you

1 know, whenever we set it up. All right. Let's turn to Ms.
2 Sturm now. Do you wish to be heard today, Ms. Sturm, on
3 behalf of --

4 MS. STURM: No, I do not.

5 MR. GROSSMAN: Okay.

6 MR. BARGE: Do you want a file?

7 MS. STURM: Thank you though.

8 MR. BARGE: Do you want a file for when you do
9 come back?

10 MS. STURM: Oh, I'll stay --

11 MR. GROSSMAN: All right.

12 MS. STURM: -- in touch, yeah.

13 MR. GROSSMAN: Let's return to the, let's not have
14 any cross-talk, let's return to the question of when we set
15 up the follow-up hearing date here. Now, what about the
16 Tower Commission? Do you -- I suspect that this is going to
17 have to go back to the Tower Commission. I don't know what
18 their schedule is.

19 MR. HUGHES: They meet the first Wednesday of
20 every month.

21 MR. GROSSMAN: Okay.

22 MR. HUGHES: Even in August. Of course I know, I
23 recognize this is just my opinion. Traditionally, if there
24 are minor changes to any applications, you would send them
25 something saying for information purposes and they would

1 decide, I guess, if they thought it was a substantial change
2 but we certainly would be willing to ask them if they think
3 they need to review it. I don't, my personal opinion is I
4 don't think they will because it's not a material change per
5 their purview but I understand your point.

6 MR. GROSSMAN: So the first time that they could
7 review it would be, you said the which Wednesday?

8 MR. HUGHES: The first Wednesday of every month.

9 MR. GROSSMAN: First Wednesday, and they would
10 meet on July 6th in other words.

11 MR. HUGHES: Yes, sir.

12 MR. GROSSMAN: I'm not sure --

13 MR. BARGE: That's not the next hearing date.

14 MR. GROSSMAN: It is the 24th so that's only 12
15 days away and I don't --

16 MS. MORRISON: For a revision. It wouldn't take a
17 new application. It's a revision.

18 MR. HUGHES: I think at least as a discussion
19 item, they can discuss whether they think it needs to come
20 back to them, Mr. Grossman, and if it did, maybe we'd have
21 to, if they thought a full review was needed, they might say
22 we need more information for the following month but I think
23 they could at least determine whether they believe they need
24 to review it again substantially.

25 MR. GROSSMAN: Well, would Staff have to look at

1 it first before it goes to them for the meeting? How does
2 that, how would that --

3 MR. HUGHES: Staff for the Tower Committee?

4 MR. GROSSMAN: Yes.

5 MR. HUGHES: Well, they have a coordinator. It
6 probably would go to the Tower Chair and she would decide
7 if, she would probably ask them to weigh in on it but it
8 would probably be her, her decision.

9 MR. GROSSMAN: The question is -- what I was
10 thinking of was two dates are possible.

11 MR. HUGHES: Yes, sir.

12 MR. GROSSMAN: One in September. We don't set
13 hearings in August usually.

14 MR. HUGHES: Right.

15 MR. GROSSMAN: So one in September and one on July
16 15th which is a date that opened up recently on my calendar.
17 I'm just not sure the July 15 date gives enough time for
18 that review so the safer date is September.

19 MR. HUGHES: I would agree because also, some of
20 those things we need to get back in the file. I would
21 agree, sir, that that's probably a little too aggressive.

22 MR. GROSSMAN: All right. So the next date would
23 be September 19.

24 MR. HUGHES: Do you know what day that is, Mr.
25 Grossman?

1 MR. GROSSMAN: That's a Monday.

2 MR. HUGHES: Monday.

3 MR. BARGE: September the 19th?

4 MR. GROSSMAN: Right. By the way, that's, on our
5 calendar, it's essentially T-Mobile month. We have one,
6 two, three, four, five and this will be the sixth T-Mobile
7 hearing set up for that month.

8 MR. BARGE: Jeez. That's a lot of hearings.

9 MR. GROSSMAN: It is.

10 MR. HUGHES: Although I think I only have the
11 pleasure perhaps of three of those, Mr. Grossman.

12 MR. BARGE: September the 9th. That's this year.

13 MR. GROSSMAN: September 19th. Yes. 2011.

14 MR. HUGHES: 9:30?

15 MR. GROSSMAN: 9:30. Is that agreeable to
16 everybody here as a hearing date?

17 MR. HUGHES: Yes, sir.

18 MR. GROSSMAN: All right. So that will be in this
19 hearing room in the Council Office building, second floor,
20 this hearing room that we're in right now at 9:30 a.m. on
21 September 19, 2011. And that means by announcing it at this
22 public hearing, I'm not going to issue a written notice.
23 The public hearing serves that purpose. I've continued the
24 hearing to another date announced at the public hearing, so
25 you all understand 9:30 a.m. here on September 19, 2011.

1 Okay.

2 And so I ask you, Mr. Hughes, to submit, in order
3 to meet that, to make sure that we don't have any further
4 snafues, can you, within 10 days, submit to me, to Technical
5 Staff and to the Tower Commission the revised statement of
6 operations, your revised balloon tests at the new location,
7 the revised plans for the new location, revised study
8 showing how coverage will improve at the new location
9 because I'm sure that your coverage study where it shows the
10 alleged deficiencies at the present, in the present
11 situation, it also analyzes the previously proposed location
12 in terms of how it will improve coverage so if you have, you
13 would need new coveraging. Can you do that within 10 days
14 or do you need more time for that?

15 MR. HUGHES: Could we have 15?

16 MR. GROSSMAN: You can. Sure.

17 MR. HUGHES: Is 15 --

18 MR. GROSSMAN: All right. So that would be -- I'm
19 not trying to squeeze you on it. I just want to make sure
20 that we have this set up in time for everybody to do the
21 reviews. So today --

22 MR. HUGHES: Mr. Grossman, I apologize.

23 MR. GROSSMAN: Yes.

24 MR. HUGHES: We're just, can I impose upon you for
25 21 days? We're just worried about the --

1 MR. GROSSMAN: All right.

2 MR. HUGHES: -- balloon fly and the weather
3 cooperating and schedules with summer.

4 MR. GROSSMAN: Okay. My only concern here is that
5 we don't have to --

6 MR. HUGHES: Right.

7 MR. GROSSMAN: -- push the date further off.

8 MR. HUGHES: Oh, no. No.

9 MS. MORRISON: No, no.

10 MR. GROSSMAN: Okay.

11 MR. HUGHES: Yes.

12 MR. GROSSMAN: So, you know, within reason, you
13 could have any time period you wanted so okay. So we're
14 talking 21 days.

15 MR. BARGE: The date is changed now?

16 MR. GROSSMAN: No, no.

17 MR. HUGHES: No.

18 MR. GROSSMAN: The date of the hearing remains the
19 same.

20 MR. BARGE: Oh.

21 MR. GROSSMAN: Let's see. We're talking about
22 July 15 for you to submit? Is that, am I adding it up
23 correctly?

24 MR. HUGHES: What day is that, sir? Is that a
25 Thursday?

1 MR. GROSSMAN: July 15 is a Friday.

2 MR. HUGHES: Friday. Yes, sir.

3 MR. GROSSMAN: Does that --

4 MR. HUGHES: Yes, sir. Yes, sir.

5 MR. GROSSMAN: Does that give enough time, Ms.

6 Morrison?

7 MS. MORRISON: That's fine, yeah.

8 MR. GROSSMAN: Okay. All right. So by July 15,
9 2011, you submit revised plans, revised balloon study,
10 revised statement, revised coverage impact to Technical
11 Staff, to OZAH, to the Tower Committee and to Mr. Barge and
12 to Ms. Sturm.

13 MR. BARGE: I'll be here on the 19th.

14 MR. GROSSMAN: You're certainly invited to be here
15 on the 19th.

16 MR. BARGE: Will you be the only one up there?

17 MR. GROSSMAN: I will be the only one probably,
18 yes.

19 MR. BARGE: What happened to the six people used
20 to sit there?

21 MR. GROSSMAN: Because this proceeding, the way
22 this proceeding works is there's one hearing examiner who
23 hears the case and gathers all the evidence and rules on the
24 evidence and then writes a report and recommendation.
25 There's a Board of Appeals then. I will not make the final

1 decision here. The final decision will be made by the Board
2 of Appeals with the five people you're talking about who
3 will be sitting up here at a work session.

4 But they will make the decision, but they will not
5 be able to take in additional evidence. They will have to
6 make a decision based on the record, the evidence that we
7 gathered here today and based on my report and
8 recommendation. And if anybody wants to argue about it but
9 not introduce new evidence, if they want to argue about it,
10 they can argue. They can ask for oral argument which is not
11 always granted by the Board of Appeals. That's the way the
12 procedure works.

13 MR. HUGHES: Mr. Grossman.

14 MR. GROSSMAN: Yes.

15 MR. HUGHES: Just one point of clarification, sir.
16 The items, the info that needs to go to Tower Committee, is
17 it okay if we supply what they need in order to make the
18 determination because certain things on the list they don't
19 necessarily always get, like our statement of justification
20 they don't usually receive. They receive like information
21 that they ask for their typical review.

22 MR. GROSSMAN: Well, I think that would be
23 sufficient then. I assume that -- yes.

24 MR. HUGHES: I just want to make sure you want us
25 to give them what they need in order to give us, tell us

1 whether they need to evaluate again, not necessarily that
2 they need all the items we were talking about.

3 MR. GROSSMAN: Right. They don't usually have
4 your statement of what you intend to --

5 MR. HUGHES: Not, not --

6 MR. GROSSMAN: Okay.

7 MR. HUGHES: Not the formal statement. They have
8 their own application and materials.

9 MR. GROSSMAN: You should also advise them of the
10 new date so that they know that we need to hear from them.

11 MR. HUGHES: Okay.

12 MR. GROSSMAN: And I guess you said they meet in
13 August so that would give them enough time, presumably, to
14 meet in August but maybe they can do it in September or
15 whatever. We do need to have their answer before.

16 MR. HUGHES: And I think the newer Code says it
17 has to be five days before or something like that.

18 MR. GROSSMAN: I believe that's what it does say.

19 MR. HUGHES: So we would be fine even if it did go
20 to September.

21 MR. GROSSMAN: All right. Is there anything else
22 that I've left out that will be changed in your plans for
23 this new location that should be supplied?

24 MR. HUGHES: Not that definitively anticipate. If
25 we made another minor tweak to the plan, we would submit

1 that in ample time.

2 MR. GROSSMAN: All right. Is there anything else
3 that we should cover at this stage?

4 MR. HUGHES: No, thank you, sir.

5 MR. GROSSMAN: Anything else, Mr. Barge?

6 MR. BARGE: No, sir.

7 MR. GROSSMAN: Ms. Sturm?

8 MS. STURM: No, sir.

9 MR. GROSSMAN: All right then. Then we are
10 adjourned until September 19, 2011.

11 (Whereupon, at 10:55 a.m., the proceedings were
12 concluded.)

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% Digitally signed by Josephine Hayes

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of T-Mobile Northeast, LLC and John D. Ammerman

Case No. S-2805

OZAH No. 11-29

By:

Josephine Hayes

Josephine Hayes, Transcriber